

### **REMARKS**

Claim 1 was rejected under 35 USC 102(a) as being disclosed by Microsoft PowerPoint. Claim 5 was rejected under 35 USC 103(a) as being unpatentable over Microsoft PowerPoint as applied to claim 1 above, and further in view of Pierce et al (US Patent No. 6,327,580), hereinafter Pierce. Claim 10 was rejected under 35 USC 103(a) as being unpatentable over Microsoft PowerPoint as applied to claim 1 above and further in view of Oda et al (US Patent No. 6,088,040), hereafter Oda. Claim 11 is rejected under 35 USC 103(a) as being unpatentable over Microsoft PowerPoint as applied to claim 1 above, and further in view of Abbott et al (PGPUB-Document Number 20020054174), herein after Abbott.

Applicants understand the Examiner's position with respect to the Microsoft PowerPoint file having two separate pages. The first page has text associated with a cat entitled "Smith's favorite pet images". The second page is entitled "Jones' 2<sup>nd</sup> favorite pet images". The question presented is when was this file created? The Microsoft PowerPoint program is indeed prior art. But it is not clear to Applicants when the file was produced. It says the first image was created April 20, 2000 and the second image was created June 20, 2000. If these are the dates then Applicants will delete claims 1-12. However, if the Examiner has created this file after the filing date of these application, then Applicants do not believe this file is prior art. Clearly, in such a situation the Examiner used hindsight, read the present application and produced this file. Without the present application, there would be no motivation to produce this file. Other tools, such as Microsoft PowerPoint, may be available but that is not the point. The point is whether there is any suggestion, disclosure or motivation to produce the present invention. Certainly the Microsoft PowerPoint program itself does provide not any suggestion of the present invention.

Applicants have included new claims 13-26. Claim 13 is the only independent claim in this series and specifies that the metadata, which includes the user identifier and affective information, separate from the digital image data is usable to retrieve the particular digital image which includes a user identifier and affective information which relates to the feelings or emotions of the user toward the particular digital image. In this claim it is clear that the metadata is separate from the particular digital image data and this metadata is used to

retrieve the particular digital image. For the purpose of this discussion, we will assume that the Microsoft PowerPoint file is prior art. In the Microsoft PowerPoint file cited by the Examiner, information related to the image is displayed simultaneously with the image and it is not stored as separate metadata. In fact, it is part of the image that the user views. An important feature of the present invention is that the affective information can be used for retrieval but is not part of the displayed digital image. The present invention therefore provides a different way for retrieval of images and does not cause the display of images simultaneously with the affective information which would be distracting to the user. Applicants believe that the art cited by the Examiner provides no motivation for the present invention. The present invention as set forth in claim 13 is believed to define unobvious subject matter.

Pierce et al do indeed disclose a JPEG compressed image but provide no other suggestion of the present invention and should not stand in the way of the allowance of claim 13.

Oda et al take a digital image of a face and then classifies the facial expression, this is done manually by a skillful operator. However, Oda et al never creates an image file let alone an image file that contains metadata.

Abbott et al do disclose monitor the physiology of a user but never creates an image file having a particular image let alone metadata separate from such particular image but which is usable to retrieve such image.

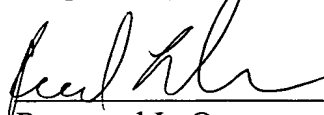
None of the reference cited to reject individual dependent claims disclose or suggest, either singly or in combination the features of new claim 13. If the Microsoft PowerPoint file is not prior art then claim 1 is also believed to define unobvious subject matter.

If the Examiner constructed the cited file using Microsoft PowerPoint, that would clearly be done in hindsight. There is nothing in Microsoft PowerPoint that would suggest that it could be used to produce the present invention. Since Applicants have offered to delete claims 1-12 if the Examiner can show that Microsoft PowerPoint file was prior art and not produced after the filing date of the present application, it may be appropriate for the Examiner to call Applicants attorney to resolve this issue.

It is believed that these changes now make the claims clear and definite and, if there are any problems with these changes, Applicants' attorney would appreciate a telephone call.

In view of the foregoing, it is believed none of the references, taken singly or in combination, disclose the claimed invention. Accordingly, this application is believed to be in condition for allowance, the notice of which is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Raymond L. Owens', written over a horizontal line.

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